

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	CC Docket No. 95-116
Telephone Number Portability)	
)	

REPLY COMMENTS OF VIRGIN MOBILE USA, LLC

Virgin Mobile USA, LLC (“VMU”), pursuant to the Commission’s January 27, 2003 *Public Notice*,¹ hereby submits its reply comments with respect to the Petition of the Cellular Telecommunications & Industry Association (“CTIA”) in the above-captioned proceeding.² CTIA requests that the Commission issue a declaratory ruling that wireline carriers have an obligation to port their customers’ telephone numbers to a CMRS provider whose service area overlaps the wireline carrier’s rate center, without an inter-carrier agreement other than a standard service level porting agreement.

VMU supports both wireless-wireless and wireline-wireless local number portability (“LNP”) because they would enhance consumer choices and experience, as well as increase competition in the industry. VMU therefore urges the Commission to grant CTIA’s Petition and clarify wireline-carriers’ obligations as requested by CTIA so the benefits of intermodal competition can be fully realized.

¹ *Public Notice*, Comment Sought on CTIA Petition for Declaratory Ruling that Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas, DA 03-211 (rel. Jan. 27, 2003) (“*Public Notice*”).

² Petition for Declaratory Ruling of CTIA filed in CC Docket No. 95-116 on January 27, 2003 (“Petition”).

I. VMU IS PRO-CONSUMER AND PRO-COMPETITIVE.

VMU, the first mobile virtual network operator in the United States, offers pay-as-you-go commercial mobile radio services (“CMRS”). VMU has developed its service to focus on, and respond to, the particular needs of the youth market by at once simplifying the offering and adding relevant value-added entertainment features. Flexibility and ease-of-use are hallmarks of VMU’s innovative service. Instead of the one- or two-year contracts common in the industry, VMU does not require any term commitment, offering pay-as-you-go convenience. Rigid monthly “bucket” plans obscure the per-minute cost of service; VMU’s customers pay only for the minutes they want at prices that are clearly stated. VMU’s “no hidden charges” pricing platform is designed to include surcharges, such as the Universal Service Fund charge, and taxes in VMU’s rates so customers know exactly what they will be charged and are not surprised by unexpected additional fees. VMU’s rapid marketplace acceptance demonstrates that its consumer-friendly approach has increased competition by bringing customers great service, value and specialized content, all at terms, conditions and pricing welcomed by the youth market.

II. WIRELESS LNP IS PRO-CONSUMER AND PRO-COMPETITIVE.

Wireless-wireless LNP is a natural extension of VMU’s consumer-friendly philosophy. VMU believes that it is inappropriate to shackle a subscriber to its service through the use of long-term contracts; similarly, a subscriber should not be held hostage by his or her current wireless carrier because switching carriers requires a new phone number.

As the FCC has recognized, the growth of wireless service makes wireless phone numbers increasingly important to consumers.³ Absent number portability, wireless subscribers

³ *Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, 17 FCC Rcd 14972, ¶ 22 (2002) (“*Verizon Forbearance Order*”).

often stay with carriers with whom they may be dissatisfied because the cost and inconvenience of giving up their wireless phone number to switch carriers is too high.⁴ The inability to port a wireless phone number to another wireless carrier remains a substantial impediment that discourages numerous consumers from switching wireless service providers.

The Commission has concluded that “wireless number portability will promote competition by making it easier for consumers to switch carriers to pursue better features, coverage and prices.”⁵ VMU agrees and supports wireless-wireless LNP implementation in the top 100 MSAs in accordance with the Commission’s November 24, 2003 deadline. VMU looks forward to the elimination of all hurdles to an openly competitive wireless marketplace, which will enable all wireless carriers to compete for subscribers on the basis of their respective service offerings and innovations.

III. WIRELINE-WIRELESS LNP IS ESSENTIAL FOR INTERMODAL COMPETITION.

Consistent with its position on wireless-wireless LNP, VMU believes that wireline-wireless LNP as described in CTIA’s Petition is essential for true intermodal competition. VMU urges the Commission to issue the declaratory ruling sought by CTIA: wireline carriers have an obligation to port their customers’ telephone numbers to a CMRS provider whose service area overlaps the wireline carrier’s rate center, and no agreement between the two carriers, beyond a standard service level porting agreement, is necessary.

⁴ *Verizon Forbearance Order*, ¶ 18.

⁵ *Verizon Forbearance Order*, ¶ 28.

VMU agrees with CTIA and other commenters that the clarification sought by CTIA is long overdue.⁶ Numerous parties have repeatedly requested Commission guidance on the important issue of wireline-wireless porting obligations.⁷ With the wireless-wireless LNP implementation deadline fast approaching, the Commission should quickly clarify wireline-wireless porting obligations so all consumers will enjoy the benefits of full LNP as the Commission intended.⁸

The “rate center disparity” issue is significant,⁹ but it does not present a technological problem that precludes the porting of numbers by wireline carriers beyond rate center boundaries, and it should not delay the implementation of wireline-wireless LNP.¹⁰ The FCC must choose between competing policies – deference to the current wireline rating convention versus promotion of intermodal competition – and intermodal competition should be the Commission’s paramount concern.

The consequences of denying CTIA’s Petition would be severe.¹¹ Without the ruling requested by CTIA, wireless carriers would have to develop a presence in all wireline rate centers in which they provide service by obtaining NXX codes in each rate center, which would overwhelm and likely exhaust the nation’s available numbering resources. If wireless carriers

⁶ See, e.g., Petition at 4; Comments of United States Cellular Corporation at 1.

⁷ See, e.g., Petition at 8-10.

⁸ As CTIA states, the Commission acknowledged that “the wireless LNP requirement had been imposed to promote both wireless-to-wireless and wireline-to-wireless competition for the benefit of consumers.” Petition at 15 (citations omitted).

⁹ As described by CTIA and reiterated by other commenters, wireless carriers typically only have switching or numbering resources in approximately one out of every eight wireline rate centers. Thus, in seven out of eight rate centers -- or nearly 90 percent -- wireless carriers lack this type of presence. See, e.g., Petition at 6, 18; Comments of United States Cellular Corporation at 3.

¹⁰ Petition at 7.

¹¹ See, e.g., Comments of T-Mobile USA, Inc. at 14-15.

did not establish a presence in each rate center, nearly 90 percent of the customers requesting wireline-wireless LNP would be unable to retain their number while switching carriers.¹² The Commission and consumer groups have understandably heralded the benefits of LNP, including wireline-wireless LNP, even after concerns about the “rate center disparity” issue were identified, and consumers now justifiably expect both the ability to port telephone numbers between carriers and greater competition, including intermodal competition. The Commission should therefore grant CTIA’s Petition.

IV. RESOLUTION OF CTIA’S PETITION SHOULD NOT DELAY WIRELESS LNP IMPLEMENTATION.

While resolution of CTIA’s Petition is essential to promote intermodal competition consistent with the Commission’s stated goals, VMU urges the Commission to act quickly to avoid delaying the implementation of wireless LNP generally. Wireless-wireless and wireline-wireless LNP should be concurrently implemented on November 24, 2003. In the event the Commission denies CTIA’s Petition, prompt action is even more critical because wireless carriers will need substantial time to take remedial measures in response to an adverse decision. If an immediate decision is impossible, however, VMU urges the Commission to move forward with wireless-wireless LNP so wireless subscribers are not further deprived of the competitive benefits of LNP.

V. CONCLUSION

VMU supports both wireless-wireless LNP and wireline-wireless LNP as described in CTIA’s Petition. VMU urges the Commission to grant CTIA’s Petition quickly so carriers may implement wireless-wireless and wireline-wireless LNP concurrently in time for the November 24, 2003, deadline. If expeditious resolution of CTIA’s Petition is not possible, VMU

respectfully requests that Commission consideration of wireline-wireless LNP not cause further delay to the implementation of wireless-wireless LNP.

Respectfully submitted,

Peter Lurie
Vice President and General Counsel
Virgin Mobile USA, LLC
10 Independence Blvd
Warren, NJ 07059

s/
Helen E. Disenhaus
Jeanne W. Stockman
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Tel: 202/424-7500
Fax: 202/424-7645

Counsel for VIRGIN MOBILE USA, LLC

Dated: March 13, 2003

¹² See Petition at 18.